

1 The videotaped/videoconferenced deposition
2 of WILLIAM BERNET, M.D., taken on behalf of the
3 Defendant/Michael Davidson, on the 4th day of
4 December, 2012, at 2:11 p.m., in the offices of
5 Vowell & Jennings, Inc., 214 2nd Avenue North,
6 Suite 207, Nashville, Tennessee, 37201, for all
7 purposes under the Rules of Civil Procedure.

8 The formalities as to notice, caption,
9 certificate, et cetera, are waived. All
10 objections, except as to the form of the
11 questions, are reserved to the hearing.

12 It is agreed that Deborah J. Harris, being
13 a Notary Public and Court Reporter for the
14 State of Tennessee, may swear the witness, and
15 that the reading and signing of the completed
16 deposition by the witness are reserved.

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1 behalf of the Plaintiff.

2 MR. FREIMUND: Jeff Freimund,
3 F-R-E-I-M-U-N-D, on behalf of Defendant Michael
4 Davidson.

5 MS. FETTERLY: Patricia Fetterly on behalf
6 of Defendant James Peters.

7 MR. BOGDANOVICH: Guy Bogdanovich on
8 behalf of Defendant Sharon Krause.

9 THE VIDEOGRAPHER: Thank you. Would the
10 court reporter please swear in the witness.

11 WILLIAM BERNET, M.D.
12 was called as a witness, and after having been first
13 duly sworn, testified as follows:

14 EXAMINATION

15 QUESTIONS BY MR. FREIMUND:

16 Q Dr. Bernet, would you please state your
17 full name for the record and spell your last name.

18 A My name is William Bernet, B-E-R-N-E-T.

19 Q What is your professional address,
20 Dr. Bernet?

21 A It's 209 Oxford House, Vanderbilt
22 University, Nashville, Tennessee.

23 Q And the ZIP code there, please?

24 A It's -- the university ZIP code is
25 37232-4245.

1 To what extent, if any, have you ever been
2 or acted as a front-line field investigator of child
3 sexual abuse, where you're one of the officials like
4 a police officer or child protective service worker
5 or the like, who conducts the initial formal
6 interview of a suspected child abuse victim?

7 A I have never been an official interviewer
8 for the forensic interview although there have been
9 times when I did the initial interview simply
10 because I was the one who identified that child
11 abuse was happening.

12 Q And in what capacity were you the one in
13 which you first identified child abuse was
14 happening? Were you a psychiatrist for the child or
15 what was the context, please?

16 A Let's see. One that comes to mind is I
17 was conducting a custody evaluation, and I
18 discovered that it seemed likely or at least
19 possible that child abuse had occurred.

20 Q Okay. Any other time where you've been,
21 to your knowledge, the first formal interviewer of a
22 child sexual abuse victim other than that one time
23 you just referenced?

24 A Not that I can think of right now.

25 Q And it's safe for me to assume, sir, that

1 you've never been a police officer or a child
2 protective service investigator?

3 A That's correct.

4 Q Okay. Have you ever provided training to
5 front-line field investigators? And when I use that
6 term front-line field investigators, I'm speaking of
7 police officers, CPS workers, and the like, who as
8 part of their duties are engaged in the first formal
9 interviews of suspected child sexual abuse victims?

10 A I have given presentations on evaluating
11 children who may have been abused. I don't think
12 it's in the context that you're thinking of, but it
13 was the kind of thing where mental health people or
14 social workers, for instance, could have been in the
15 audience. But I have never done training
16 specifically for a group of policemen or a group of
17 child protection workers.

18 Q Okay. The trainings that you've typically
19 provided, are those typically to psychiatrists
20 and/or psychologists?

21 A Yes.

22 Q Were you providing training to anybody
23 about child interviewing techniques during the 1984
24 to 1985 time period?

25 A Well, I'm trying to reconstruct where I

1 would have been then. I was living either in
2 Washington, D.C., or nearby in Virginia. And so I
3 was supervising child psychiatry trainees and adult
4 psychiatry trainees. So that topic may well have
5 come up. And I may have given presentations by that
6 point at meetings -- at professional meetings on
7 this topic. I mean, if I knew you were going to ask
8 me, I could go back. I mean, I have a list of
9 presentations that I have given, but I don't have
10 that with me.

11 Q That's in your resume --

12 A No, it's --

13 Q Your CV?

14 A No. All the presentations that I have
15 ever given are not in my CV. They're in another
16 document.

17 Q Okay. Would you agree that you do not
18 have any knowledge or expertise or opinion about
19 what training was being provided to front-line field
20 investigators before or during the time frame of
21 1984, 1985?

22 A That's correct. I'm not familiar with
23 specific curricula or specific training programs
24 during that time.

25 Q All right. Am I correct, sir, that in

1 your initial written report that you prepared in
2 this case for Ms. Zellner, you were not really
3 focusing on the standards applicable to child
4 interviewing techniques that -- to the extent they
5 existed during the 1984 and 1985 time frame, and in
6 your supplemental report, you kind of first started
7 focusing on that time frame; is that a fair
8 understanding of the difference between your two
9 reports?

10 A Yes.

11 Q Why was it in your second that you focused
12 for the first time on the 1984 and 1985 time frame?

13 A What happened was that I believe
14 Ms. Zellner received the report of Dr. Phillip
15 Esplin which made some attempt to address that
16 topic, and then she asked me to read his report.
17 And so to some extent what I was commenting on was
18 responding to his report.

19 Q Okay. Are you familiar with Dr. Esplin?
20 I mean, have you read his works and have some
21 knowledge about his expertise?

22 A Yes.

23 Q Would you regard him as a person who does
24 have expertise in interviewing suspected victims --
25 suspected child victims of sexual abuse?

1 A Yes, he does.

2 Q Would you also regard him as an expert in
3 kind of the evolution in the field regarding the
4 techniques that are used by investigators of child
5 sexual abuse?

6 A I don't know if he is or not. I know that
7 he discussed that topic in the statement he made --
8 or the report he made, but I don't know if he's an
9 expert in that.

10 Q Do you record yourself as an expert in the
11 evolution or history of techniques in child
12 interviewing?

13 A I guess it depends on your definition of
14 expert. I don't think I'm an authority in that
15 field, but I would probably be considered an expert
16 simply because it's part of training and in general
17 of conducting forensic evaluations of children.

18 Q Would you agree that back in the 1984 and
19 1985 time frame, there was no commonly accepted
20 script for use by field investigators when
21 conducting interviews of suspected child sexual
22 abuse?

23 A I don't know if there was.

24 Q Do you know if there is one to this day?

25 A Oh, there are several different protocols

1 for conducting interviews that I'm aware of. One is
2 called the RATAC, R-A-T-A-C. And one is produced by
3 a government agency called the NICHD interview
4 protocol. And there may be others. So I know there
5 are protocols now.

6 Q All right. Are you aware of whether the
7 NICHD protocol was authored in part by Dr. Esplin?

8 A Yes, I think he participated in that.

9 Q Would you agree, sir, that none of those
10 protocols that you just referenced were in existence
11 during 1984-1985 time frame?

12 A Yes, I believe that's correct.

13 Q Would you agree that there is no clear
14 protocol or script, if you will, for how to avoid
15 asking leading or suggestive questions during the
16 course of a child sex abuse interview during the
17 time frame of 1984 to 1985?

18 A I don't know if there was.

19 Q What's your definition of a leading
20 question?

21 A Well, here. I'll compare what I think --
22 at least what I consider a suggestive question with
23 a leading question. A suggestive question is when
24 the interviewer says, Did Uncle Joe touch your
25 private part? Because it suggests that Uncle Joe

1 may have done something. A leading question would
2 be to the effect, Didn't Uncle Joe touch your
3 private part?

4 So that's the distinction that I make. I
5 don't know. I think other people don't even make
6 that distinction but they consider them the same
7 thing.

8 Q I understand those are examples of them,
9 but -- but can you give me a definition for a
10 leading question?

11 A Well, to make the comparison again, a
12 suggestive question has the answer embedded
13 somewhere in the question as a proposed answer. A
14 leading question not only has the answer embedded in
15 the question, but it's asked in such a way that the
16 person who is being asked the question is expected
17 to give that answer. There's an ex -- a leading
18 question has an expectation in it that's higher than
19 what's in a suggestive question, at least in the
20 distinction that I'm making.

21 Q Back in the 1984 or 1985 time frame, do
22 you think those definitions you just provided were
23 clearly established and known by field investigators
24 conducting child sex abuse interviews?

25 A I don't know, as I said before, exactly

1 what training people would have had. But I think
2 that the problem of asking leading and suggestive
3 questions has been known for many, many years. I
4 don't know how it was defined or what the
5 instructions may have been for field investigators.
6 But I think the problem, the concept of leading and
7 suggestive questions, has been known for a hundred
8 years.

9 Q Would you agree, though, Dr. Bernet, that
10 one of the difficulties that academicians struggled
11 with, and to some extent I think still do, is
12 defining what constitutes leading or suggestive
13 questions in the context of conducting interviews of
14 suspected child abuse victims?

15 A I don't know that there's difficulty. I
16 think that there's a difficulty sometimes in
17 actually conducting the interview. But I don't know
18 that there's difficulty in defining what a
19 suggestive question is -- at least I haven't heard
20 that.

21 Q Okay. Are you familiar with the article
22 that was written by Roland Summit in 1983 -- or it
23 was published in 1983, I should say more accurately,
24 entitled, "The Child Sexual Abuse Accommodation
25 Syndrome"?

1 would disagree with that.

2 Q Do you think back in the 1983 to '85 time
3 frame that most people would have disagreed with
4 that number that he was saying, that no more than
5 two or three per thousand children have been found
6 to exaggerate or invent claims of sexual
7 molestation?

8 A I'm quite sure that there would have been
9 discussion and disagreement about that statement,
10 but I really don't know -- I don't know whether most
11 people would have disagreed with it. I think that
12 would have been --

13 Q In fact -- I'm sorry?

14 A I think that would have been a statement
15 that some people would have challenged or disagreed
16 with, but I -- I really don't have any way to know
17 whether the majority of professionals would have
18 done that.

19 Q Well, the next sentence immediately after
20 that one I just quoted you from Roland Summit's
21 article reads as follows, quote: "It has become a
22 maxim among child sexual abuse intervention
23 counselors and investigators that children never
24 fabricate the kinds of explicit sexual manipulations
25 they divulge in complaints or interrogations," end

1 quote.

2 Would you agree with that observation by
3 Dr. Summit that, at least back in 1983, it was a
4 maxim, M-A-X-I-M, among investigators that children
5 don't lie when they provide explicit details of
6 sexual abuse?

7 A I think that most people would agree that
8 it would be unusual for a child to knowingly lie,
9 but that sometimes they did. And -- and -- and I
10 think that most people would have been aware that --
11 that children may have come to wrongly believe that
12 something happened. In other words, I think in the
13 1980s and before that, it was understood that the
14 child isn't necessarily knowingly lying but the
15 child might be representing something that is not
16 correct because of the way the child had been
17 previously questioned. In other words, the child
18 might be unknowingly giving a false statement.

19 Q Understood. Would you agree though, sir,
20 that the vast majority -- and I am speaking from the
21 perception of the field investigator, just so we can
22 be clear on that, not as a psychiatrist or
23 psychologist.

24 But from the perspective of a field
25 investigator, wouldn't you agree that most field

1 say.

2 Q Back in the 1984-1985 time period, would
3 you agree that during that time frame, it was kind
4 of generally accepted that the anatomically correct
5 dolls could be used as a diagnostic tool as well as
6 a -- as -- as the other tool you were referencing?

7 A I don't know when that distinction was
8 made and when that clarification was made.

9 Q Okay. Your article goes on to talk about
10 false denials, that it's not -- would you agree,
11 sir, that it is not unusual for a child to make a
12 false denial of sexual abuse? In other words, when
13 sexual abuse topics are discussed with a child, it's
14 not uncommon for a child, at least initially, to
15 deny that any abuse occurred when it is later
16 determined that, in fact, sexual abuse did occur?

17 A Yes, I would agree that that happens.

18 Q Would you agree that it happens quite
19 frequently, that more often than not children will
20 initially deny abuse?

21 A Oh, I don't know the exact numbers. I
22 don't know that it happens more likely than it
23 doesn't happen, but I would certainly agree that
24 it's common for it to happen.

25 Q All right. And when a child initially

1 denies abuse, is it your view that at that point a
2 child interview should stop, recognizing that it's
3 common for children to initially deny abuse?

4 A I think it would depend on the overall
5 circumstances of the evaluation. It would depend on
6 what other information the person has. You would --
7 you would collect information, for instance,
8 about -- from other sources, collateral sources,
9 about exactly how the suspicion even arose. And if
10 there was a strong basis for the suspicions in the
11 first place, then there might be a reason to go
12 ahead with the interview and try other methods with
13 the child or perhaps meet with the child on a --
14 again.

15 But if the original basis for the
16 suspicion was very, very small, then you might
17 simply go with the denial and say, you know, there
18 is very little suspicion in the first place and now
19 the child is making a denial so there's no reason to
20 go ahead.

21 Q Just based on that answer, sir, would you
22 agree that a field investigator like a police
23 officer or a CPS worker attempting to interview a
24 suspected victim of child sexual abuse has to make
25 numerous judgment calls during the course of a

1 guilty, polygraph results.

2 MS. ZELLNER: I'm going to object to --
3 let me interject -- wait, wait, wait.

4 Let me interject an objection, okay,
5 because it's an incomplete hypothetical, it
6 calls for speculation. You can answer it,
7 Doctor, if you understand the question.

8 THE WITNESS: Well, I think I do. And I
9 think I would agree that it is possible that
10 even a very poorly conducted interview might
11 conceivably produce an accurate statement of
12 what happened. It's theoretical -- it is
13 theoretically possible for a very bad interview
14 to have an accurate result. But the problem is
15 you have no way to know it. I mean, that's
16 the -- that's -- of course, the problem is when
17 you're done with the very bad interview, you
18 have no way to know whether the statement is a
19 result of the interview or a result of
20 something that actually happened.

21 BY MR. FREIMUND:

22 Q And that's -- that's your view in this
23 case, I take it then, that you have no way of
24 knowing whether the statements made by the children
25 in this case were accurate recounts of what actually

1 happened versus something that may not be accurate?

2 A I don't -- based on what I reviewed, I
3 don't have enough information to have an opinion
4 about that. I think there is too much missing
5 information to know, at least for me to have an
6 opinion about that.

7 Q Okay. I'm reading a little bit further in
8 your article entitled "Practice parameters for the
9 Forensic Evaluation of Children and Adolescents Who
10 May Have Been Physically or Sexually Abused" that is
11 dated March of 1997. And there under the heading of
12 "The Child's Credibility" on page 431, can I direct
13 your attention to that portion of your article,
14 please.

15 A Yes.

16 Q Near the -- in that first paragraph,
17 you're talking about some studies that listed
18 factors that were thought to show enhanced
19 credibility. One of them was the child uses his or
20 her own vocabulary rather than adult terms and tells
21 the story from his or her point of view. And
22 another is the child reenacts the trauma in
23 spontaneous play.

24 Do you see where I'm referring to there?

25 A Yes.

1 questions. I think the next day, there was an
2 opportunity. They went to the beach or something.
3 And Ms. Spencer said that she was interested to get
4 even more information, so she went back and asked
5 more questions. And so we don't know exactly what
6 happened in that conversation. And for instance,
7 specifically we don't know whether Ms. Spencer could
8 have been suggesting acts to Kathryn.

9 Q Based on what we do know from reviewing
10 what she wrote in her description of what happened
11 on the occasion she was speaking to Kathryn Spencer
12 about these issues, what -- do you fault anything
13 that she records in that written statement?

14 A Well, I don't know what you mean by
15 "fault," I mean -- because we don't know what really
16 happened, and she doesn't spell out what really
17 happened.

18 So I guess I would fault her lack of
19 sufficient detail as to what happened in the
20 conversation to really be able to assess the
21 conversation.

22 Q Would it be fair to say based on that
23 answer that you cannot say whether or not Shirley
24 Spencer used leading or suggestive or coercive
25 interview techniques when she was speaking with

1 Kathryn Spencer after Kathryn Spencer allegedly
2 attempt to touch her private areas?

3 A That is correct. We do not know whether
4 Ms. Spencer used that kind of questioning.

5 Q Are you aware that Kathryn Spencer later
6 disclosed sexual abuse to her therapist?

7 A Well --

8 Q Before she was interviewed by -- before
9 she was interviewed by Detective Krause?

10 A Yes, I mean I -- yes, I have heard that.
11 We don't, of course, know what really happened in
12 those conversations either.

13 MS. ZELLNER: I want to interject an
14 objection. That misstates the evidence.

15 THE REPORTER: Was that Ms. Zellner?

16 MS. ZELLNER: Yes.

17 BY MR. FREIMUND:

18 Q So you would agree, would you not,
19 Dr. Bernet, that you cannot -- you do not have an
20 opinion that the therapist for Kathryn Spencer used
21 leading or suggestive or coercive interview
22 techniques when Kathryn Spencer disclosed sexual
23 abuse by her father to that therapist?

24 A I think I understand your question. I --
25 and it's that I -- I don't know what happened in

1 those therapy meetings. So I don't know whether
2 that kind of questioning occurred.

3 Q Okay. Do you know what kind of
4 questioning occurred by the Sacramento Police
5 Department, Detective Flood, when he questioned both
6 Kathryn Spencer and Matthew Spencer before they were
7 interviewed by Detective Krause?

8 A No, I don't know what questioning occurred
9 there.

10 Q So once again, based on your lack of
11 knowledge, you can -- you have no opinion one way or
12 another whether he used suggestive, leading or
13 coercive interviewing techniques, correct?

14 A Yes.

15 Q You indicated in your article -- I'm just
16 going down a little further on that same section
17 entitled "Child's Credibility." I think it's --
18 well, it's at the very bottom before you start the
19 next section on physical examination of children who
20 may have been abused. And the last two sentences
21 before you start that next section, you say that
22 these criteria that you've just gone through for
23 assessing credibility have been based on clinical
24 experience and on limited preliminary research --
25 and again, we're talking 1987 -- 1997 when you were

1 writing this -- and that "it should not be -- be
2 taken to be infallible and could be misunderstood or
3 misused."

4 Could you explain a little bit what you're
5 trying to say there, or just elaborate a little bit
6 on what you're saying there, please.

7 A I think that even now assessing
8 credibility in this kind of circumstance, you can't
9 do it by just taking one little piece of what
10 happened, one little statement that the child said
11 or the way the child said it, that you have to make
12 a list of a number of different factors, and that no
13 one of them is -- usually, no one of them is
14 determinative. But you somehow have to combine the
15 information from these different factors.

16 Q Okay. The last sentence in there, you
17 said: "Finally, it should be noted that a child's
18 spontaneous statement made while he or she was
19 emotionally upset may have substantial value later
20 in court." And you cite a 1992 case.

21 What are you referring to there, please?

22 A I don't know what the case was at this
23 point.

24 Q Well, that's fine. I meant more what was
25 the point you were trying to make?

1 Q You don't happen to have that before you?

2 A I have it.

3 Q I understand if you don't.

4 A I have it somewhere here, yes. I have it
5 with me.

6 Q You do have it with you?

7 A Yes. Do you want me to find it?

8 Q Yes. If it would be fairly easy for you
9 to locate.

10 A I have her written statement.

11 Q Okay. And look -- looking at that, I
12 would -- I'll just go back to my prior question.
13 And that is, would you agree that Kathryn Spencer's
14 initial disclosure of sexual abuse by her father and
15 others to Shirley Spencer as described by Shirley
16 Spencer in that document would fit in the category
17 of a spontaneous disclosure of sexual abuse?

18 A Okay. It looks like to me that the first
19 statement made by Kathryn suggesting abusive
20 behavior is halfway down the second page where she
21 says -- well, actually it says here she again said.
22 It says: "She again said Karen and my mommy let me
23 rub their titties and pee-pee."

24 So I'm not -- that says again. I'm not
25 sure if she said that earlier. I cannot find that

1 touch her genital area. And Ms. Spens -- Shirley
2 Spencer said, You're not supposed to do that. So
3 the child feels reprimanded. She feels that she
4 either did something wrong or she thinks she did
5 something wrong.

6 And the child then says, Oh, somebody else
7 did this. I did this with somebody else. Somebody
8 else let me do this. In other words, that's not
9 spontaneous. That is in reaction to the child's
10 feeling that she is in some kind of trouble. And
11 she defends herself or she deflects the blame, if
12 there is any blame, from herself doing things that
13 are bad to somebody else. And she ends up in the
14 next few minutes blaming her mother, this woman
15 named Karen, and ultimately her father, that they
16 all had been touching her because she's being
17 criticized for too much touching. So that -- that's
18 not what I would consider spontaneous.

19 Q Okay. Would you consider that sexualized
20 behavior by Kathryn Spencer to touch Shirley
21 Spencer's breasts and attempt to touch her genital
22 area?

23 A Oh, it's certainly sexualized behavior.
24 And she reportedly had been masturbating. Her
25 mother described her as masturbating a lot. And so

1 her mother.

2 So she did manifest -- as far as I can
3 tell, she did manifest more sexualized behavior than
4 an average child. But I really don't know whether
5 it's enough that I would consider it, you know,
6 pathological.

7 Q Would you consider it a red flag that she
8 might be a victim of sexual abuse?

9 A Yes, I would consider it a -- a -- a --
10 well, that she's been exposed to something that
11 she -- or else possibly that -- that she was not
12 parented well regarding this topic. For instance,
13 maybe --

14 Q Who was it? Do you -- I'm sorry. Go
15 ahead.

16 A Maybe when she was masturbating back home
17 where she lived with her mother most of the time,
18 maybe her mother didn't handle it very well. Maybe
19 as a result, she did it even more and then she got
20 even more interested and did other sexualized
21 behavior. In other words, I don't -- we don't know
22 enough about the history to know what it's a red
23 flag of.

24 Q But it is a red flag of something?

25 A Yeah, it's -- it's a flag in the sense

1 A Yes, that's correct.

2 Q Okay. I want to go a little bit further
3 in your article that we've been looking at. The
4 same page where you talk about physical examination
5 of children who may have been abused. And then at
6 the bottom of that first paragraph there, you say
7 quote: "In most cases of sexual abuse, there are no
8 abnormal physical findings. In Adams, et al 1994
9 study, the genital examination in sexually abused
10 girls was clearly abnormal in only fourteen percent
11 of the cases."

12 Does that -- does that continue to be your
13 understanding, sir, that even in cases where it's
14 known that a child -- a girl was sexually abused,
15 it's very rare that there will be abnormal physical
16 findings in a medical examination?

17 A It depends, I think, on what the abuse
18 was, what the nature of the abuse was. Certainly,
19 if the abuse was fondling, then it would be very
20 unlikely that there would be abnormal findings. If
21 the sexual abuse was penetration -- was vaginal
22 penetration, then it's more likely that there would
23 be findings.

24 Q How much more likely? Do you know?

25 A No.

1 Q I'm just -- I'm just wondering about this
2 quote you -- in this -- in your article where you
3 said the genital examination in sexually abused
4 girls was clearly abnormal in 14 percent of those --
5 in 14 percent of cases.

6 Do you know whether or not that 14 percent
7 is referring to cases in which sexual intercourse
8 was alleged?

9 A At this point, I don't.

10 Q Okay. Do you have any reason to believe
11 that -- that the percentage of cases in which sexual
12 intercourse is alleged that result in normal genital
13 examinations is anything greater than 14 percent?

14 A I don't know.

15 Q Okay. I'm jumping forward in your article
16 now, sir, where starting on page 433, you have an
17 outline of practice parameters for the forensic
18 evaluation of children and adolescents who may have
19 been physically or sexually abused. And there's a
20 lot of stuff in there at the beginning that I don't
21 know, at least in my eyes, isn't particularly
22 important to the issues in this case.

23 But I would like to start under the
24 diagnostic assessment. Under subsection A1 there,
25 you said that it's important to obtain the history

1 and how the allegation originally arose and
2 subsequent statements that were made.

3 Along that line, sir, would you agree that
4 the earliest interview of a child oftentimes has the
5 most credibility?

6 A Well, I certainly have heard that, that
7 the earlier -- the sooner the interview is after the
8 actual abuse, the more likely -- the more accurate
9 is the report. I mean, I have heard that and it
10 seems logical that that would be the case.

11 Q All right. Let's go down a little further
12 then, please. Under subsection 4, you talk about
13 symptoms and behavioral changes that sometimes occur
14 in sexually abused children. Under category B
15 there, or item B, you speak of disassociative [sic]
16 reactions and hysterical symptoms, such as periods
17 of amnesia, daydreaming, trance-like states,
18 hysterical seizures, and multiple personality
19 disorders.

20 Would you agree, sir, that at least some
21 victims of child sexual abuse will report that they
22 have no memory of it or amnesia about it?

23 A Yes. I believe that that's been
24 described.

25 Q Would you agree that one explanation of

1 that may be that in the course of being traumatized,
2 if you will, by a sexually abusive act, some
3 children disassociate and, in the vernacular, check
4 out as a protective response?

5 A Yes, that's correct. The word is actually
6 dissociate.

7 Q I apologize if I mispronounced that.
8 Sorry.

9 You go on to describe other symptoms and
10 behavioral changes that sometimes occur in sexually
11 abused children under subsection D there.
12 Disturbances in sexual behaviors, including sexual
13 hyperarousal manifested by frequent or open
14 masturbation, excessive sexual curiosity, imitating
15 intercourse, inserting objects into vagina or anus,
16 sexual promiscuity, and sexually aggressive behavior
17 towards others, or age-inappropriate sexual
18 knowledge.

19 Would you agree, sir, that Kathryn Spencer
20 displayed some of those behaviors, or maybe more
21 accurately, several of those behaviors you just
22 listed there?

23 A Well, let's see. We have information that
24 she engaged in frequent masturbation. And I guess
25 you would call it sexually aggressive behavior

1 toward others in that she attempted to touch the
2 breasts and genital area of her stepmother. I don't
3 actually know whether she had age-inappropriate
4 sexual knowledge. I know that -- I know she
5 described things that young children don't know
6 about usually, but I don't -- I don't know how she
7 came about to describe those things.

8 Q Would you agree from the descriptions,
9 among other things, attempting to touch Shirley
10 Spencer's breasts and genital area, that she
11 displayed excessive sexual curiosity?

12 A Yes, you can call it that -- or yeah. I
13 guess I referred to it as aggressive behavior, but
14 it could be either one or both.

15 Q Okay. We've been going about an hour and
16 twenty minutes or so, sir. Would you like to take a
17 break or do you want to press on?

18 A I'll take a quick break.

19 MS. ZELLNER: Actually -- yeah, we need to
20 take a quick break too.

21 MR. FREIMUND: Okay. Why don't we all
22 stay on the video line but take five minutes.
23 Would that work for you?

24 MS. ZELLNER: Yes.

25 THE VIDEOGRAPHER: Here marks the end of

1 arrangement. I think the -- the decor of the office
2 should be at least not provocative. In other words,
3 I guess it -- I don't know that it really has to be
4 child friendly particularly, but at least it should
5 be neutral and not provocative in any way.

6 Q Your next item there is if possible
7 audiotape or videotape the interview.

8 Would you agree, sir, that there is no
9 commonly accepted standard of care requiring that
10 child sexual abuse interviews should be or must be
11 audio-taped or videotaped?

12 A I really don't know if there was in 1984.
13 I believe that now there is. I believe that
14 currently it's -- it's -- almost everybody agrees
15 that interviews should be electronically recorded.

16 Q Do you know when that agreement was
17 arrived at temporally?

18 A No.

19 Q Would you agree that even in the 1990s,
20 there was extensive debate about whether child
21 sexual abuse interviews should be audiotaped or
22 videotaped?

23 A Yes, I believe that is correct. I -- so
24 people have gone back and forth about that. I don't
25 hear much debate about it currently. As far as I

1 that what you are saying?

2 A Yes. What I'm saying currently is that
3 one or two interviews probably covered the vast
4 majority of cases. Maybe occasionally somebody
5 needs three. I -- I -- I think you would have -- it
6 would be very unusual in my mind to need more than
7 that.

8 Q Would you agree, sir, that you do not know
9 whether that was the standard of care back in the
10 1984 and 1985 time frame, that one, two or three
11 interviews is the limit?

12 A I don't know.

13 Q All right. I think we've gone through
14 some of these other ones where you talk about
15 testing, ability to recall historical events --
16 (inaudible.)

17 (Reporter requests clarification.)

18 Q -- accurately assess the child's
19 understanding of telling the truth, and encouraging
20 spontaneous narratives. So I'm going to go down to
21 the Item 7, where you say: "Proceed from more
22 general statements to more specific questions."

23 Would you agree, sir, that what you're
24 recommending in this article then is that a
25 funneling technique should be used in child sexual

1 interview involving a child who is reluctant to
2 disclose?

3 A I think that sometimes that is necessary,
4 but it has to be done with the full understanding
5 that what the child then says, you do not really
6 know for sure whether the child is simply endorsing
7 what the interviewer suggested or whether it's
8 actually eliciting factual information.

9 So you have to do it very cautiously and
10 you have to do it with that knowledge that whatever
11 you get from that process may or may not be
12 historically accurate.

13 Q Would you also agree, sir, that the two
14 interview protocols or scripts that you referenced
15 earlier, the one by I believe it was NICH [sic], and
16 the other one, that both of those interview
17 protocols do include the use of leading and
18 suggestive questions if necessary when interviewing
19 reluctant child witnesses?

20 A Yes.

21 Q So even to this day, currently the
22 recommended interview protocols for reluctant child
23 witnesses advocate, if need be, the use of leading
24 and suggestive questioning during the interview?

25 A I believe that's correct, but it's with

1 the understanding that you're not really sure --
2 when you get answers, you're not really sure about
3 the reliability of those answers.

4 Q Okay. Let's go down to Item No. 9, used
5 restatement, i.e., repeating the child's recount
6 back to the child.

7 What you are suggesting there is that it's
8 appropriate for a child interviewer to kind of
9 repeat back to the child what the child has
10 disclosed to them about sexual abuse; is that true?

11 A Yes. You're doing that carefully, of
12 course. And you're basically giving the child an
13 opportunity to tell you whether or not you have the
14 information correctly.

15 Q Okay. And I'm going to kind of blend
16 Items 10 and 11 together there.

17 You say that in general the examination
18 should take place without the parent present; but if
19 a child is very young, consider having a family
20 member in the room.

21 Would you agree that that's one of those
22 judgment calls that an interviewer has to make about
23 whether or not to have the parent present in the
24 room during the interview, particularly for a
25 younger child?

1 A Yes. I think ultimately the -- that's --
2 the interviewer is going to have to figure that out.
3 And, again, if you do allow the parent to be present
4 or if that's necessary, you have to take that into
5 consideration that that might influence what the
6 child says.

7 Q Okay. I'm going to skip No. 12 where you
8 talk about using age-appropriate techniques and go
9 to 13 where you say: "Determine the child's terms
10 for body parts and sexual acts."

11 Is that referencing what we were talking
12 about before, where it's appropriate for an
13 interviewer to have a drawing of a human body and
14 have the child identify body parts, including
15 genitalia and so forth, and identify -- have the
16 child identify by name what they call those body
17 parts? Is that what you're talking about there?

18 A Yes. And some protocols do include that.
19 For instance, the RATAAC protocol includes that as
20 part of a routine interview. The NICHD protocol
21 doesn't. They -- they actually discourage it. So
22 different people have different ways of going about
23 that. But it is accepted by some people.

24 Q When you say RATAAC, is that an acronym?

25 A Yes. R-A-T-A-C is an acronym for an

1 ask a child whether the child was to disclose or not
2 disclose anything, you know, whether they were told
3 to keep a secret, basically, right?

4 A Yes.

5 Q And it's also appropriate to ask the child
6 who it was that they are saying abused them, right?

7 A Uh-huh. Well, you know, you keep
8 referring to "ask." Of course, ideally this kind of
9 information came out during the free narrative
10 description by the child. So you don't --

11 Q Okay.

12 A -- you don't end up having to ask these
13 questions.

14 Q But in a less-than-ideal world where the
15 child did not disclose that in the pre-narrative, it
16 would be appropriate to ask a specific question
17 about who it was who touched them inappropriately,
18 would it not?

19 A You may need to do that with the
20 understanding that every time you ask a question,
21 you might be contaminating the child's understanding
22 and memory.

23 Q Sure. But it might nonetheless be an
24 appropriate interview technique in that
25 circumstance, correct?